

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON LAMAR MALLORY,

Defendant-Appellant.

UNPUBLISHED

October 4, 2007

No. 271802

Oakland Circuit Court

LC No. 2006-207596-FH

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of less than 25 grams of oxycodone, MCL 333.7403(2)(a)(v). Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 1½ to 15 years in prison. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that there was insufficient evidence to show that he exercised dominion or control over the drugs the police seized from a bedroom in defendant's mother's house, and thus, that defendant's constructive possession of the drugs was not established at trial. We disagree. This Court reviews de novo challenges to the sufficiency of the evidence. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). When sufficiency of the evidence is challenged, "this Court reviews the evidence in a light most favorable to the prosecution to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006) (citation omitted).

To show that defendant possessed less than 25 grams of oxycodone, the prosecutor must prove that (1) defendant possessed a controlled substance, (2) the substance possessed was oxycodone, (3) defendant knew he was possessing oxycodone, and (4) the oxycodone was in a mixture that weighed less than 25 grams. MCL 333.7403(2)(a)(v); see also *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). On appeal, defendant argues that the evidence presented was insufficient to establish defendant's possession of the oxycodone, as it did not establish that defendant had been in the room recently enough to establish dominion or control over the drugs.

Actual physical possession is not required in order to show possession of a controlled substance; possession may be constructive. *Wolfe, supra* at 519-520. "The essential question is

whether the defendant had dominion or control over the controlled substance.” *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). Constructive possession is shown when circumstantial evidence and reasonable inferences sufficiently link the defendant to the contraband. *Wolfe, supra* at 521; *Fetterley, supra*.

Police learned that defendant resided in his mother’s house via independent records available to them. Additionally, men’s clothing, pictures of defendant, and bills and receipts in defendant’s name were found in the same bedroom as the oxycodone. While police did not check the size of the clothing, the Michigan Supreme Court has held that even if a prosecutor does not directly demonstrate that clothing found in a room fits a defendant, an inference that the clothing belongs to the defendant may still be reasonably drawn when other evidence links the defendant to the room. *People v Hardiman*, 466 Mich 417, 423-424; 646 NW2d 158 (2002). The finding of men’s clothing in the bedroom, coupled with the other evidence recovered and the independent investigation conducted by the police, is sufficient to support an inference that defendant resided in the room.

Defendant argues that this evidence does not place him in the room at a time close enough in proximity to when the drugs were found to establish defendant’s dominion or control over the drugs. We disagree. The prosecutor need only prove his or her own case beyond a reasonable doubt and does not have to refute every theory of defendant’s innocence. *Fetterley, supra* at 517. It was established at trial that a person of the same general description as defendant sold cocaine from the house within 48 hours of the search. The evidence discussed *supra* tended to show defendant resided at the house. This evidence and the inferences it supports, when viewed in a light most favorable to the prosecution, establishes a sufficient nexus between defendant and the drugs to allow a jury to conclude that defendant constructively possessed the oxycodone.

We affirm.

/s/ Richard A. Bandstra

/s/ Michael J. Talbot

/s/ Karen M. Fort Hood